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July 22, 2005

Mary L. Cottrell
Secretary of the Department
Department of Telecommunications and Energy
One South Station – 2nd Floor
Boston, MA 02110

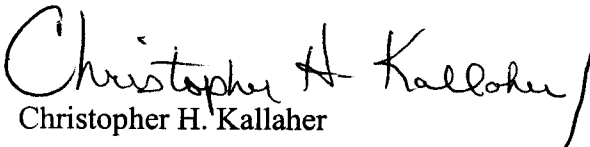
Re: Additional Comments of Direct Energy Services, LLC
D.T.E. 04-115

Dear Ms. Cottrell:

Enclosed for filing in the above-referenced docket please find an original and ten copies of **Additional Comments of Direct Energy Services, LLC**. Kindly return a date-stamped copy of the document in the self-addressed, stamped envelope provided.

Should you have any questions, do not hesitate to give me a call.

Yours truly,


Christopher H. Kallaher

Enclosures

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DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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|--------------------------------------|---|---------------|
| Request for Comments on the |) | |
| Procurement of Default Service Power |) | D.T.E. 04-115 |
| Supply for Residential and Small |) | |
| Commercial and Industrial Customers |) | |

ADDITIONAL COMMENTS OF DIRECT ENERGY SERVICES, LLC

I. EXECUTIVE SUMMARY

Direct Energy submits these comments in response to the Department's request for supplemental comments following the technical conference in this docket conducted on June 20, 2005. Much has been said already in this docket, and Direct Energy will confine its comments to those issues raised at the technical conference about which there remains a real difference of opinion. Thus, these comments will not discuss further many of the issues raised initially in this matter by the Department's notice, including proposals that would have utilities procure wholesale power for basic service using contract terms longer than one year or a "laddered" procurement schedule. Most parties, in their initial and reply comments and in testimony at the technical conference, expressed the view that there would be little or no advantage to consumers in revising the current basic service procurement schedule. There is a general consensus that having utilities enter into longer term contracts would expose customers to additional risks that could not be justified in light of the meager or nonexistent benefits from such contracts. In addition, this type of contracting would send a chilling message to the very competitive marketplace the Department seeks to encourage through this inquiry.

In these comments, Direct Energy will address the question of what can or should be done "to facilitate the development of a competitive retail market for smaller customers." Notice

of Technical Conference at 2. On this point there is little disagreement about the current state of the competitive retail market for small customers. The competitive options for most small customers are few or none.¹ This ground is well-traveled; the migration reports prepared by DOER are available on their website and show little or no migration in the residential and small business customer classes.

Opinions diverge in two key areas. The first split occurs over the question of whether the competitive market is capable of providing a robust solution for small customers. The second split occurs among those who believe there is a problem but disagree about the solution.

Direct Energy encourages the Department to answer these two fundamental policy questions in the following manner. First, the Department should reject once and for all the view that the status quo is an acceptable or desirable end state for the small customer market. Having nearly all small customers take pass-through generation service procured by their utility is an inherently unstable arrangement that must change, and it should change in favor of more competitive choices for these customers, as the Legislature intended. Direct Energy's previous comments and the previous comments of other parties address the instability of the status quo in detail. In these comments, Direct Energy will mainly provide evidence of robust competitive activity elsewhere, which we believe shows that small customers want choices and will shop for electricity if they have them. This discussion will include a description of the products and services Direct Energy provides to customers in other jurisdictions that have also grappled with the issues the Department has raised in this docket.

Second, the Department should review the suggestions of those who believe small customers want and deserve more options, and implement as soon as possible those measures

¹ Even those who live on Cape Cod and are included in the Cape Light Compact cannot claim to have an array of options; for the most part, they can choose either to be served by the Compact's supplier or return to utility service.

that will help increase customer choices without exposing utilities or customers to undue risk. One utility, National Grid, has suggested a plan that includes measures that fall into this category, and Direct Energy supports enthusiastically the implementation of those measures.

II. SMALL CUSTOMERS WILL SHOP IF GIVEN THE CHANCE

While the Department has maintained a steadfast commitment to increasing competitive options for small customers, some parties at the technical conference raised the possibility that the retail market for small customers may simply not be susceptible to a robust competitive solution. The concern raised by this group is that the per kilowatt-hour price is the main (or perhaps sole) driver of customer decision-making and that competitive suppliers have simply been unable to offer sufficient savings to win more than a handful of small customers away from basic or standard offer service. If this were true, one would have to conclude that nearly all small customers remain on utility service because it just so happens that the structure of basic service is, in fact, what they want, and competitors are unable to provide it more efficiently.

This possibility is highly unlikely. As discussed further below, when given the opportunity, customers respond to a wide variety of retail energy offers. In fact, it is nearly impossible to identify a single product or service that is truly one size fits all, for which one provider can satisfy all customers with one offering. Even gasoline, which is as fungible a consumer commodity as one can imagine, is provided by countless retailers who compete fiercely on the basis of numerous qualities, with price simply being one of these elements. There is no reason to believe that the retail market for small electric customers is immune from the kind of robust retail competition that can be found in virtually every other market in which the market structure does not place competitors at an unfair disadvantage.

Commissioner David O'Connor summarized this view quite cogently at the technical conference when he discussed the need to allow the market to identify and serve the entire spectrum of consumer preferences:

I would remind the Commission and my colleagues that I think we all know, from watching markets operate elsewhere, that customers are not monolithic. They do not have uniform preferences. To assume that all customers want in their electric bill exactly the same thing is, I think, presumptuous. And it's important to keep in mind that over time a marketplace will work to try to identify what customers really want and to try to find efficient groups of customers who may want the same thing, but it may be different from other customers.

So I believe it's important that basic service provide a simple, predictable, and transparent product, and allow the marketplace to decide if it can find and serve customers with different products. Those products might, for example, actually be more stable than what basic service provides. They might be products that have single prices for three years or five years. On the other hand, it might be able to persuade customers that they should go towards something more like an indexed hourly price in order to get even cheaper electricity and pay even less of a premium for stability.

My view is that this is the kind of activity that the statute contemplated competitive suppliers engaging in to try to serve customers effectively and that basic service provides the proper sort of posture for the customers who have not made choices in terms of the delivery of service to them and allows the market now to try to identify alternative pricing structures, alternative service packages, whatever it may be to try to attract those customers.

Tr. 55-56.

There is also no reason to believe that the lack of competitive options is due simply to the inefficiency of the available competitors. Those who spoke at the technical conferences represent some of the largest and most sophisticated energy companies in North America, along with a number of smaller companies that have shown to be adept at identifying and serving specific customer needs. All of these companies would likely agree that it is time for the Department to recognize that the current state of the competitive market for small customers is due not to consumer disinterest or competitor inefficiency but to the continued presence of barriers to entry that harm consumers by depriving them of benefits that they would otherwise

enjoy if those barriers were reduced or eliminated. In states and countries where the market structure addresses historical barriers to entry, one finds what one would expect to find: multiple firms offering a wide array of services that cater to the panoply of consumer tastes.

The Texas Experience

Texas is a good example of small customers' desire and willingness to shop for power. At the technical conference, Direct Energy circulated a print-out of the retail offers available to residential customers in the Houston area.² As of July 15, 12 retailers were offering 17 alternatives to the "price to beat" service provided by Reliant Energy, the affiliated retail electricity provider in that area.³ These offerings include fixed price plans, variable price plans, all-wind plans, and "pollution-free" plans. Direct Energy itself offers two products in the Houston area. The "Guaranteed Savings Program" offers a price that is guaranteed to be six percent less than the published "price to beat." The "Price Protection Program" offers a lower per kilowatt-hour price accompanied by a \$5.00 per month fixed charge, appealing to high-usage residential customers.

There is strong evidence that consumers are responding favorably to these competitive options. Not only has Texas seen a significant number of residential customers switch away from "price to beat" service, it has also seen a growing number of customers switch from one competitive supplier to another. This is an important metric in judging the robustness of the retail market. "Price to beat" service expires at the end of 2006, at which point all customers will be served by competitive offerings at market prices. The presence of inter-supplier switching

² This information is based a report for the Houston zip code 77255 using the offer comparison tool on the Public Utility Commission of Texas's "Power to Choose" web site. The report is attached as Attachment A to these comments. The comparison tool can be found at www.powertochoose.org/yourchoice/compareoffers.asp.

³ "Price to beat" is similar to our standard offer service. It offers consumers a six percent discount versus pre-restructuring prices, subject to a fuel adjustment. Price to beat service is not provided by the distribution utility, however. It is offered by the "affiliated retail electricity provider" or "AREP" for the area, which is a structurally-separated competitive affiliate of the distribution company.

should give regulators confidence that consumers are adapting to a market that will remain dynamic after the “price to beat” expires.

The large number and wide variety of residential offers in Texas, along with robust shopping activity both away from price to beat and among competitive suppliers, also show that the Attorney General’s criticism of the Texas model is misplaced. The Attorney General’s representative at the technical conference stated that in Texas “what we have is a price to beat that bears no relationship to the actual cost of power in the market. We’re actually manipulating the price of basic service or default service in order to encourage people to transfer to another supplier.” Tr. 42. While it’s fair to argue that any transitional model could be improved, the Texas model has proven to be a very reasonable mechanism for managing the numerous competing issues in establishing a fully competitive retail market. On the other hand, after seven years of standard offer programs which do not properly reflect the true cost of commodity, there are essentially no competitive options for residential customers in Massachusetts. This is significantly different from the Texas result, where new products are being introduced, improved service is being offered, price competition is available, and active customer switching is happening. Direct Energy would argue that the key difference in the two experiences is not that the Texas market design has manipulated prices and the Massachusetts market has not, but rather that the market structure implemented by the Texas Restructuring Act overcame barriers to competitive entry that have not yet been eradicated in Massachusetts.

The Orange & Rockland Experience

The “PowerSwitch” program in the Orange & Rockland service territory in New York has also shown that small customers want choice and will shop for electricity if given the

chance.⁴ The PowerSwitch program creates an opportunity for customers who are likely to be interested in non-utility options to be given information about offers from competitive suppliers that can save the customer money immediately. The New York Public Service Commission describes the plan as follows:

ESCOs in the program agree to offer a guaranteed discount to participating customers for a two-month period and to take all residential and small commercial customers that are referred to it by the utility, thereby lowering the ESCOs' customer acquisition costs. Customers that call the utility for any service question (e.g., billing inquiry) are asked if they would be interested in taking part in this program, which offers guaranteed savings for the first two months. This sign-up process is simple for customers and many decide to participate. Orange and Rockland has found that customers that sign up for the program usually remain with the ESCO beyond the initial two month period. This program has proven to be highly successful for moving both electric and gas mass-market customers.

New York PSC Policy Statement on Orange & Rockland "Switch and Save" Program, August 2004.

Approximately one-third of Orange & Rockland's residential customers have switched to a competitive supplier through the PowerSwitch program. The success of the PowerSwitch program is especially strong evidence of customers' interest in retail choice because customers "self-select" themselves for participation in the program. Contrary to the Attorney General's characterization, this is not a "bait and switch" program. Customers have options and make affirmative choices among those options at every step in the process, including at the end of the initial offer period. Customers always have the right to return to utility service and they cannot be forced to take a higher priced service against their wishes.

Indeed, the evidence shows a high level of customer satisfaction with retail choice in the Orange & Rockland service territory. In calendar year 2004, only 1.6 percent of customers participating in retail access returned to the utility for commodity service. In contrast, 3.7 percent switched from one competitive supplier to another, indicating growing customer

⁴ This program was know as "Switch and Save" when it was first introduced in 2000.

awareness of and comfort with the marketplace. Moreover, as Orange & Rockland itself has reported to the New York Public Service Commission, “consistent with an effective program, there has been a very low number of complaints respecting specific ESCOs or respecting the PowerSwitch program.” See Attachment B, letter from Orange & Rockland to New York Public Service Commission in Docket No. PSC-08-05-00008-P, at p. 3. For example, there have been no verified instances of slamming since the PowerSwitch program began in August 2000.

Direct Energy’s Experience in Other Markets

In other markets where it is active, Direct Energy has seen a high level of small customer interest where the market structure reduces or eliminates barriers to entry that are unrelated to efficiency in providing service. In those markets, Direct Energy offers a wide variety of products and services that seldom rely on a single factor (such as per unit price) to attract customer interest. As discussed above, Direct Energy offers two residential services in the Houston market. In the Ohio gas market, Direct Energy offers a “Price Dropper” product.⁵ This is a three-year contract in which the price goes down each year. In the face of the widespread perception that natural gas prices are more likely to increase rather than decrease over the next three years, some customers find this a very compelling arrangement. This is especially attractive to small start-up businesses which expect to grow over time.

Direct Energy’s experience has been that customers are interested in many factors other than a snapshot comparison to the per-unit price of the competing utility service. This is entirely consistent with the Technical Session comments of Sharon Rodriguez of National Grid, who discussed the experience in the United Kingdom:

Although we've also heard that competition isn't working for smaller customers in many other states, we perhaps can look across the Atlantic into the England and Wales market, where in excess of some 50 percent of residential customers have actually switched to the

⁵ Direct Energy offers service in the COH and DEO markets.

competitive sector. Now, I don't advocate that we adopt the UK model. I think we've learned a lot along the way from implementing that structure. However, it does demonstrate, with the right market structure and with the right underlying pricing process, you can encourage competition for the residential sector to take place. And many of the products that were offered in the England and Wales market as an example, yes, were indeed a price reduction on the order of about 10 percent. So that's very consistent.

However, there were also a whole range of alternative products which customers found very attractive. They had, similar to what we see over here in the cell-phone market, where you have a fixed amount per month, regardless of your consumption rate. Those are the products that were very attractive to particularly the older part of the community, who were on a fixed budget for their income. Those sort of products were very attractive to that sector of the market and were instrumental in aiding those customers to effectively take advantage of competition. And there are a whole series of those kind of examples where competition was effected not purely around the price proposition but in terms of satisfying the underlying need of customers in how they wanted to procure their energy. So I would encourage that we maybe think about the wider prospect of what is competition and what do customers want from that competition as we go forward.

Tr. 91-92.

III. WHAT THE DEPARTMENT CAN DO

Where the market has been unable to provide anything other than a single offering, as has been the case with small customers in Massachusetts, there is a strong likelihood that barriers to entry created by the current market structure prevent firms from offering products and services that would otherwise increase benefits to consumers. Direct Energy sees this to be the case in Massachusetts, and in its previous comments in this docket (and in other dockets, as well), Direct Energy has recommended structural changes in the market that would reduce or eliminate these barriers to entry, for the benefit of consumers. We will not repeat these arguments here, but will note that both Texas and New York have adopted some of these changes and, where they have, small customers have more choices than they do in Massachusetts.⁶

⁶ For example, in Texas, the utility's retail operation is structurally separate from its distribution function and customers deal only with retail suppliers (whether affiliated or unaffiliated with the utility) for their electricity needs. This includes provision of new service – to initiate new service, customers must call a retail supplier and the retail supplier makes arrangements with the T&D company. While seemingly innocuous, this allows customers that are

Direct Energy continues to hold the view that an optimal market structure would require the implementation of some or all of the elements of the plan it has presented to the Department and to the Massachusetts Legislature on several occasions. However, if the Department wishes to take a more incremental approach, the Department can implement measures now that will increase small customer options without exposing utilities or customers to undue risk. National Grid has proposed a plan that includes two such measures. These are a “PowerSwitch” style program for the MECo service territory, and a plan to buy the accounts receivable of competitive suppliers who do business in the MECo service territory and use the consolidated billing option. Direct Energy encourages the Department to adopt both of these measures in the MECo service territory, and consider their implementation in other utility service territories as well.

PowerSwitch Program

As discussed by several parties at the technical conference, one of the most significant barrier to entry for competitive suppliers is the cost to acquire small customers. Regardless of how attractive a competitive offer might be, it will not sell itself. Companies must advertise or engage in other marketing efforts, especially if they want to reach mass market customers. Acquisition costs per unit of customer consumption are higher for smaller customers than for large customers. The cost to acquire an industrial customer that spends \$100,000 per month on generation service is not likely to be 1,000 times greater than the cost to acquire a residential customer who spends \$100 per month on generation service.

On the other hand, utilities have never incurred such acquisition costs. In exchange for taking on the obligation to serve, utilities were freed from the need to market their services.

new to the state or to the market area to begin developing a trust with retail suppliers that otherwise may not form. In New York, retail costs that the utility would avoid if it exited the merchant function entirely are unbundled from distribution rates and included in the commodity price against which other suppliers compete (although the utility is made whole until it, in fact, avoids those costs). Direct Energy strongly supports structural separation and further unbundling of the utility’s retail costs.

Even now, utilities continue to “acquire” basic service customers at no cost; customers who initiate new service in a utility service territory are placed on basic service by default. For a competitor supplier, being more efficient is not enough. A competitive supplier must be sufficiently more efficient that it can provide its shareholders a return on the upfront customer acquisition cost and still offer a service that the customer will find compelling.

A PowerSwitch-style program is one simple and effective way to reduce the disparity in acquisition costs between competitive suppliers and utilities. Under the program, participating suppliers would agree to provide an initial percent discount from the MECo Basic Service price for residential and/or small commercial customers. Like the program in the Orange & Rockland service territory in New York, customers would self-select for participation in the program during customer-initiated contacts with the MECo call center. Only those customers whose proactive contact with the call center meets the criteria approved by the Department would be solicited for the program, and only those affirmatively choosing to participate would be included in the program. Those customers would be switched to the participating supplier of their choice at a discounted price that would be guaranteed for at least the first two months of service. After that, the supplier would either contract directly with the customer for continued service on different terms, continue to provide service at the discounted rate, or arrange for the customer to return to Basic Service. The customer would be free to return to Basic Service at any time.

There is no downside to such a program, and considerable potential upside. Competitive suppliers that are willing to offer a discount off Basic Service can gain access to customers efficiently, while customers are informed of competitive options at a time when they are already thinking about their electric service and can choose an option that would bring immediate savings.

Purchase of Receivables (“POR”) Program

Under this proposal, MECo would purchase the accounts receivable of competitive suppliers doing business in the MECo service territory, at an appropriate discount and without recourse to the supplier. This program would support the PowerSwitch program. As described by National Grid at the technical conference, the POR discount would reflect the bad debt percentage attributable to each customer class and applied to those customers who receive a combined bill from MECo. The POR Discount would be calculated using net charge-offs and the principles established by MECo in DTE 03-88E and converted to a percentage of commodity revenue. Suppliers would have a twelve month period of known bad debt costs. Each year, MECo would establish a new discount rate and incorporate the over- or under-recovery of net charge-offs from the previous 12 month period. Suppliers may elect to use dual billing, but their customer receivables for that customer class would not be eligible for the POR program. MECo would continue to provide customer service and billing for all POR and MECo basic service customers.

The POR program is an elegant solution to potential inequities in the current market structure that are more subtle than the issue of customer acquisition costs. Bad debt risk is considerably higher for competitive suppliers than for a utility. The utility is able to collect the bad debt associated with Basic Service through the reconciliation of costs associated with that service. Utility customers who do pay ultimately bear the risk of non-payment by the customers who do not pay. Competitive suppliers have no such ability to socialize their bad debt among paying customers. The risk of bad debt is borne solely by shareholders.

In the case of small customers, the risk of bad debt is especially high. If a small customer does not pay for several months and is returned to basic service, the uncollectible portion of that

loss will likely be large enough to wipe out any profit the supplier may have made from that customer relationship (and perhaps several other customer relationships as well). With larger customers, suppliers typically have more effective options for ensuring or collecting payment.

Because of the risk associated with non-payment in the smaller customer classes, competitive suppliers spend a great deal of time and effort assessing the creditworthiness of potential customers. Not only is this an expense that utilities do not incur, but it can also lead to results that many would consider to be either socially undesirable (such as overt or *de facto* red-lining) or financially inequitable (such as “cream-skimming” lower risk customers away from the utility, thus increasing the bad debt absorbed by remaining utility customers).

The POR program solves this problem by giving utilities and competitive suppliers the same level of bad debt risk. Competitive suppliers would pay their fair share of bad debt in the form of the discount applied to their receivables. Suppliers could not game the system by continuing to segregate customers based on credit risk because the impact of leaving higher risk customers with the utility would be reflected in the re-calculated discount rate the following year. Suppliers would avoid the cost of screening customers based on credit risk, but this would not be a cost passed on to utilities. Rather, those costs would simply be eliminated from the system, and would be used instead to provide more attractive offers to customers.

In this arrangement, the utility’s role would differ from that of a typical commercial factor, which purchases the accounts receivable of other business at a discount. First, a commercial factor earns a profit by collecting a higher percentage of the debt than is reflected in the discount rate applied to the purchase. Under the plan proposed by MECo, the utility has no incentive to bargain down the amount paid for the receivables; the discount rate will reflect the actual bad debt rate for the customer class in question. Second, unlike a commercial factor, the

utility already has a commercial relationship with the competitive supplier's customers, since the utility provides those customers with distribution serves, presents a bill containing both the utility's and the supplier's charges, and collects the money from the customer, apportioning the supplier its payment according to the Department's rules. The POR program is a natural extension of the utility's existing role in presenting a consolidated bill and collecting money from the customer.

Direct Energy fully supports National Grid's efforts to implement these two programs, and encourages the Department to view these as reasonable measures that will improve competitive options for customers at little or no cost or risk to utilities or consumers.

Continue to investigate other approaches to procurement for small customers

While this proceeding has focused on the possibility of using longer term contracts to further shield customers from fluctuations in the market price of electricity, Direct Energy encourages the Department to continue its investigation of other approaches to basic service procurement by looking at options that send a more accurate price signal to customers. The hypothesis that smaller customers place price stability over a host of other benefits that more accurate price signals would bring remains for the most part untested. This is true even though in other contexts consumers often express a strong preference for the benefits that would come from sending all customers more accurate and direct signals regarding the costs of power and the implications of their consumption of electricity.

Specifically, the use of shorter term procurements producing monthly prices could have the following benefits for customers:

- Provide better price signals to consumers on default service allowing homeowners and businesses to improve the environment and save money by reinforcing thoughtful efficiency investments and wise energy usage;
- Foster a marketplace where numerous competitive suppliers compete to serve customers, enhancing overall customer service and allowing new innovative products to come into the market; and
- Result in cost savings for customers who stay with utility service (compared to the rate these same customers would pay if basic service were procured using longer-term contracts).

Using shorter term procurements and monthly pricing also would not result in unmanageable volatility for consumers. Procurement contracts even as short as one month significantly mitigate the volatility of the hourly wholesale markets. Further, competitive suppliers, like Direct Energy, will offer a range of competitive fixed price service to consumers, giving them far more options for choosing their own level of price stability than they have now under the current procurement plan.

Giving customers the price signals they need to control their electric usage and make appropriate investments in energy conservation would serve a wide range of worthwhile purposes that have been touched on in this proceeding. It would improve wholesale markets, bring the environmental benefits associated with conservation, and allow customers to save money when prices are high. Direct Energy encourages the Department to continue its investigation of approaches to procurement that would consider ways to bring these benefits to all customers, including residential and small business customers.

Make a strong statement in favor of competition

The other important step the Department can take in this docket is to restate a strong and continuing commitment to building a robust retail market for small customers. A sustained commitment to the small customer retail market will be particularly important should the Department choose to continue a more incremental approach to this issue. Incremental measures such as those proposed by National Grid will help but it is not yet clear that such measures alone will bring the benefits of a competitive retail market to small customers in a permanent and robust manner. We urge the Department to be prepared to take further action to build on the momentum that the PowerSwitch and POR programs are likely to create rather than viewing these two relatively modest measures as the last chance for the small customer retail market in Massachusetts. The records in this docket and others contain a number of further recommendations for improving the small customer market. Direct Energy believes strongly that one or more of these recommendations will prove to be the next logical step in the continued development of the Massachusetts retail market. A firm statement by the Department in this docket that it remains open to further market-building measures will bolster the confidence of all market participants and increase the chances of ultimate success.

IV. CONCLUSION

Direct Energy is encouraged by the Department's desire to continue its discussion about the state of the retail market for small customers. It is also encouraging that the Department is actively seeking to learn about how other jurisdictions have dealt with the problem of bringing competitive options to small customers. The measures proposed by National Grid would be an important step in the right direction and would certainly do no harm. If a "PowerSwitch"-style program and the purchase of supplier receivables do not lead to the robust competition that small

customers want and deserve, we encourage the Department to continue its dialogue with those represented at the technical conference, and to reconsider some of the other measures proposed by Direct Energy in its initial comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C.H. Kallaher", with a horizontal line drawn underneath it.

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Dated: July 22, 2005







Residential Electricity offers for HOUSTON, TX

77255

Update

Cost per Month estimates are based on electricity usage of 1,000 kWh per month and are inclusive of fixed and variable charges.

Electricity

| Sign Up | Provider Offer | Cost Per Month | Save First Year | Min. Term (Mo.) | Eco Info | Facts Label and Terms | Average Price per kWh (1000 kWh) |
|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------|----------------|-----------------|-----------------|-------------------------------------------------------------------------------------|------------------------------------------------|----------------------------------|
|  | YOUR AFFILIATE REP IS: Reliant Energy Price to Beat | \$128 | 0 | 1 | | This is the basis for comparison. | \$0.128/kWh |
| Choose | First Choice Power, Inc. Easy Price Plan | \$122 | 5% | 1 | | Terms of Service ; Facts Label | \$0.122/kWh |
| Choose | Green Mountain Energy Company 100% Wind | \$141 | Variable | 0 |  | Terms of Service ; Facts Label | \$0.1411/kWh |
| Choose | Starlight Electric Star Treatment Plan | \$116 | 9% | 1 | | Terms of Service ; Facts Label | \$0.116/kWh |
| Choose | Green Mountain Energy Company Pollution Free | \$127 | Variable | 0 |  | Terms of Service ; Facts Label | \$0.1268/kWh |
| Choose | TXU Energy Services Electricity | \$122 | 5% | 1 | | Terms of Service ; Facts Label | \$0.1216/kWh |
| Choose | ECONergy Energy Company, Inc. ECONergy Variable Rate Plan | \$138 | Variable | 12 | | Terms of Service ; Facts Label | \$0.138/kWh |
| Choose | Direct Energy, LP Price Protection Program | \$119 | 7% | 0 | | Terms of Service ; Facts Label | \$0.119/kWh |
| Choose | ACN Energy, Inc. Electricity | \$128 | 0% | 1 | | Terms of Service ; Facts Label | \$0.12805/kWh |
| Choose | Reliant Energy Price to Beat | \$128 | 0% | 1 | | Terms of Service ; Facts Label | \$0.128/kWh |
| Choose | Green Mountain Energy Company Pollution Free - Reliable Rate | \$127 | 1% | 12 |  | Terms of Service ; Facts Label | \$0.1268/kWh |
| Choose | Direct Energy, LP Guaranteed Savings Program | \$120 | 6% | 0 | | Terms of Service ; Facts Label | \$0.1203/kWh |
| Choose | Entergy Solutions Ltd. Savings Advantage Plan | \$119 | 7% | 0 | | Terms of Service ; Facts Label | \$0.119/kWh |
| Choose | Green Mountain Energy Company 100% Wind - Reliable Rate | \$141 | None (-10%) | 12 |  | Terms of Service ; Facts Label | \$0.1411/kWh |
| Choose | Gexa Energy Corp Gexa Green - 100% Pollution Free | \$122 | 5% | 1 |  | Terms of Service ; Facts Label | \$0.122/kWh |
| Choose | Amigo Energy Easy Deposit Program | \$127 | 1% | 6 | | Terms of Service ; Facts Label | \$0.1274/kWh |
| Choose | Cirro Energy Residential Electric Service | \$118 | 8% | 12 | | Terms of Service ; Facts Label | \$0.118/kWh |
| Choose | Just Energy Texas, LLC Residential Savings and Service Guarantee Plan | \$121 | 5% | 0 | | Terms of Service ; Facts Label | \$0.121/kWh |
| Choose | Gexa Energy Corp Power Plan | \$108 | 16% | 1 | | Terms of Service ; Facts Label | \$0.108/kWh |

If you have questions about how to choose a Retail Electric Provider, please call toll-free 1-866-PWR-4-TEX (1-866-797-4839). For questions about a particular REP's offer or pricing, please contact that REP directly.

John L. Carley
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April 5, 2005

VIA EXPRESS MAIL

Honorable Jaclyn A. Brilling
Secretary
State of New York
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Orange and Rockland Utilities, Inc – Retail Access Plan
I.D. No. PSC-08-05-00008-P

Dear Secretary Brilling:

On January 27, 2005 Orange and Rockland Utilities, Inc. (“Orange and Rockland” or the “Company”) submitted its Plan to Foster the Development of Competitive Markets (“Retail Access Plan”) in response to the New York Public Service Commission’s (“Commission”) *Statement of Policy on Further Steps Toward Competition in Retail Energy Markets*¹ (“Statement of Policy”). In a letter dated March 23, 2005, New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (collectively referred to as the “N/R Utilities”) filed comments on Orange and Rockland’s Retail Access Plan. By this letter, Orange and Rockland submits its response to the comments filed by the N/R Utilities. As described further below, the N/R Utilities’ comments are untimely, ill informed, and otherwise without merit. Accordingly, the Commission should reject summarily the comments submitted by the N/R Utilities.

PowerSwitch Promotes Customer Awareness of Competition

In their comments (at 3), the N/R Utilities complain that Orange and Rockland is “bearing the cost of marketing the program, supported by rates paid by all customers.” Given such support, the N/R Utilities argue that, “it is questionable whether the program results in any net benefits to customers.” Orange and Rockland’s promotional efforts,

¹ Case 00-M-0504, Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets and Fostering Development of Retail Competitive Opportunities, *Statement of Policy on Further Steps Toward Competition in Energy Markets*, (issued August 25, 2004).

however, are fully consistent with the longstanding Commission practice of promoting customer awareness of energy programs. In this case, the PowerSwitch program being promoted by the Company is intrinsic to the Commission's public policy goal of promoting utility restructuring, retail competition and customer choice. The Commission specifically recognized the importance of this goal in the Company's most recent electric rate proceeding by allocating \$660,000 towards customer outreach and education programs to increase the awareness and understanding of competitive choice.² One of the key elements in these programs is the promotion of the PowerSwitch program. The promotion of retail competition and retail choice, however, is hardly unique to the Company. In fact, in the Joint Proposal (at 34) adopted in a recent NYSEG rate case³, NYSEG pledged its allegiance to this very goal by stating:

NYSEG supports the concept that customer outreach and education is an integral part of the customer service function, and that outreach and education about competitive choices is essential for the successful transition to a competitive gas retail market.

Not content with lip service, NYSEG agreed to implement an annual \$350,000 Outreach, Education and Competition Initiatives Fund, funded by ratepayers, to facilitate the promotion of retail competition and retail choice (Joint Proposal at 30). In light of these actions, the N/R Utilities complaint that the Company is using rates paid by all customers to support PowerSwitch rings hollow.

PowerSwitch Works for Customers

In their comments (at 1), the N/R Utilities call on the Commission to immediately investigate, and determine whether to halt, the PowerSwitch Program. Orange and Rockland finds these comments inexplicable in light of the success of the PowerSwitch program with the Company's customers. As the Commission noted in the Statement of Policy (at 16), "[W]e view the Switch and Save program⁴ as a good transitional model that will help residential customers to get acquainted with obtaining energy supply from a non-utility provider." Orange and Rockland's experience certainly bears out this statement. Currently, 31% of Orange and Rockland's electric customers and 37% of its gas customers are enrolled in retail choice. These migration levels are far and away the most successful in New York. The PowerSwitch program has been instrumental in achieving these migration levels. Specifically, 55% of the electric customers and 50% of the gas customers enrolled in retail choice were enrolled through the PowerSwitch program.

² Case 03-E-0797, In the Matter of Orange and Rockland Utilities, Inc.'s Proposal for an Extension of an Existing Electric Rate Plan, Filed in Case 96-E-0900, Order Adopting the Terms of a Joint Proposal (issued October 23, 2003), (see page 11 of the Joint Proposal).

³ Case 01-G-1668, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Gas Service, Order Establishing Rates (issued November 20, 2002).

⁴ As noted in the Company's Retail Access Plan (at 3), the latest evolution of the Switch and Save program is called PowerSwitch.

As it has done since the outset of its successful program, Orange and Rockland will continue to work to improve the effectiveness of its retail access program. Orange and Rockland will listen to suggestions from anyone who puts them forward, including the N/R Utilities. However, the N/R Utilities do not offer either observations or facts that support a basis for modifying the PowerSwitch program. When boiled down, the N/R Utilities offer nothing more to support their extravagant claims than empty allegations that there “may be” cases where consumers are not served by retail access. It should go without saying that unfounded allegations are not remotely a basis for the highly unusual submission presented by the N/R Utilities.

It is hardly surprising that the N/R Utilities fail to present facts that support their claims because the facts refute the N/R Utilities’ claims. The energy services companies’ (“ESCOs”) retention rates puncture the N/R Utilities’ contentions by testifying, in the most striking terms, as to customers’ satisfaction with the ESCOs’ performance. During calendar year 2004, approximately 0.1% per month (or 1.5% annually) of the gas customers participating in retail access returned to the Company for commodity service.⁵ During calendar year 2004, approximately 0.1% per month (or 1.6% annually) of the electric customers participating in retail access returned to the Company for commodity service. In fact, the numbers of customers who switch among ESCOs, both in the gas program (6.7% of customers switching annually) and electric program (3.7% switching annually) indicate customer awareness of the marketplace. Also consistent with an effective program, there has been a very low number of complaints respecting specific ESCOs or respecting the PowerSwitch program.⁶

PowerSwitch Complies with the UBP

In their comments (at 4-5), the N/R Utilities speculate that the PowerSwitch program may fail to comply with the requirements set forth in the Commission’s Uniform Business practices (“UBP”). Specifically, they allege that the PowerSwitch program may violate the enrollment procedures of the UBP. The N/R Utilities contend (at 4) that the PowerSwitch program “does not specifically address what type of agreement is required for the ESCO to continue to serve the customer, or what constitutes an affirmative authorization by the customer to continue purchasing from the ESCO beyond the initial two-month period.”

The PowerSwitch program complies with the UBP’s enrollment requirements. According to the PowerSwitch protocols, a customer initiates gas and/or electric service by consenting to being assigned to an ESCO, either by the customer’s selection or by random assignment, for an initial two-month period during which the customer receives an introductory 7% discount on commodity service. In this process, the Company brings together the ESCO and the customer. Customers can contact the Company and request to participate in the PowerSwitch program in one of the following four ways:

⁵ Orange and Rockland maintains retention statistics on a total retail access program basis. It cannot provide retention statistics solely for PowerSwitch participants.

⁶ For example, since the inauguration of Switch and Save in August 2000, there has been no verified instance of slamming.

1. Customers can enroll by calling and speaking with an Orange and Rockland service representative. Subsequent to this call, Orange and Rockland either randomly assigns the customer to a participating ESCO or to the ESCO selected by the customer from a list of participating ESCOs.
2. Customers can fill out the enrollment card found in their monthly bill and return with their bill payment. The enrollment card allows customers to specify a specific ESCO or to authorize the Company to assign an ESCO.
3. Customers can enroll on the Company's Internet site where they can select an ESCO from a drop down box or allow the Company to assign an ESCO.
4. Customers can enroll by registering on the Company's automated voice response unit ("VRU"). Customers enrolling by means of the VRU cannot specify a specific ESCO. Rather, the Company will assign an ESCO to these customers.

Those customers specifically selecting an ESCO are obviously immediately made aware of the identity and contact information of the ESCO and consent to service from such ESCO. For those customers that desire the Company to assign an ESCO, these customers consent to the assignment right away and then are alerted as to the identity and contact information of their ESCO by means of the confirmation letter described below. From the perspective of the participating ESCO, as a condition to participating in the PowerSwitch program, the ESCO consents to serving participating customers assigned to them under the terms of the program (e.g., the 7% discount on commodity for the initial two months).⁷ Both the customer and the ESCO consent to PowerSwitch participation at the outset.

When a customer signs up to participate in the PowerSwitch program, pursuant to the requirement of Section 5.E.1 of the UBP, Orange and Rockland sends a confirmation letter to the customer. A sample confirmation letter is attached to this letter.⁸ This confirmation letter to the customer summarizes the essential terms of the PowerSwitch program:

- That the customer has agreed to purchase electricity from an alternative supplier;
- The name and address of such alternative supplier;
- The date when the alternative supplier will commence providing electricity to the customer;
- That the customer's electricity will be provided by such alternative supplier at a discount of 7% off the Company's supply rate for a two month period;

⁷ Participating ESCOs execute a consolidated billing agreement with the Company.

⁸ Under the Company's PowerSwitch program, a participating customer can purchase electricity and/or natural gas from an ESCO. The attached confirmation letter addresses the situation where a customer participating in the PowerSwitch program will purchase electricity from an ESCO. A similar letter is sent to customers participating in the PowerSwitch program who will purchase natural gas from an ESCO.

- That the alternative supplier will be in contact with the customer within the next several weeks to provide information about itself and to discuss prices beyond the two month introductory period;
- That Orange and Rockland will continue to deliver the customer's electricity;
- That Orange and Rockland will continue to bill the customer for both the alternative supplier's supply charges as well as the Company's delivery charges; and
- That the customer retains the right to discontinue purchasing its electricity from the alternative supplier and return to Orange and Rockland as its electricity supplier.

As part of the framework for participating in the PowerSwitch program, an ESCO must provide the Company with a copy of the information packet that the ESCO will provide to participating customers. Orange and Rockland emphasizes to participating ESCOs that they must comply with the UBP requirements (e.g., the "Changes in Service Providers" criteria of Section 5.B) in the same manner as if the customer had contacted the ESCO directly to enroll at the outset. Under the UBP, ESCOs are required to obtain customer authorization within the first two months of PowerSwitch service, in the same manner as if they had initially been contacted by and enrolled the customer. Pursuant to UBP Section 5, Attachment 1-3, the ESCO, and not the utility, is responsible for obtaining and retaining the agreement and/or authorization between the customer and the ESCO.

It is the Company's understanding that ESCOs are complying with these requirements and the lack of customer complaints referred to above provides evidence of such compliance. Certainly, the mere possibility that a participating ESCO "may be" violating the UBP requirements hardly constitutes a reason to grant the relief sought by the N/R Utilities (i.e., the launching of a full-scale investigation).⁹ The Company respectfully submits that the possibility of malfeasance by individuals necessarily exists in any free market system; the N/R Utilities should be required to provide credible evidence that ESCOs are violating the UBP's requirements in order to justify a wide-ranging examination of ESCO compliance with UBP rules.

Prices Charged By ESCOs in a Competitive Energy Market Need Not Be Reviewed and Regulated In the Same Way that Prices for Monopoly Utility Services are Reviewed and Regulated

In their comments (at 2), the N/R Utilities contend that since the prices that ESCOs may charge participants in the PowerSwitch program after the initial two months are not subject to review, regulation and approval by the Commission, such prices may not be just and reasonable. As with the allegation that PowerSwitch may violate the UBP's enrollment requirements discussed above, this allegation is undermined fatally by the fallacious assumption that participants are not informed of and do not agree to, prices beyond the initial two month period. Moreover, the N/R Utilities implicit assumption

⁹ Moreover, customers participating in PowerSwitch have the same rights against ESCOs under the UBP (e.g., for improper enrollment) as other customers.

that prices must be subject to public monitoring by the Commission in order to be “just and reasonable” ignores the fundamental nature and design of the competitive marketplace. As the Commission recently stated, “[T]he best way to ensure just and reasonable rates for commodity and customer services is to establish conditions for the fully competitive commodity and customer services markets.”¹⁰

The PowerSwitch program has established conditions for a fully competitive commodity market. Since ten ESCOs are currently participating, PowerSwitch offers customers with a viable choice among competitive suppliers. Given the information provided by the Company and participating ESCOs, customers are afforded the ability to make informed choices. Finally, the ability of customers to return to the Company for electric and/or gas service, along with the absence of termination fees, only serves to enhance a customer’s ability to choose. By actively facilitating customer choice, the PowerSwitch program benefits the Company’s customers.

The N/R Utilities’ Comments Are Untimely

While the N/R Utilities’ comments are nominally directed against Orange and Rockland’s Retail Access Plan, in reality they constitute a not particularly subtle rearguard assault on the Statement of Policy. As the N/R Utilities specifically note in their comments (at 6), in the Statement of Policy the Commission endorsed Orange and Rockland’s Switch and Save (now PowerSwitch) program, characterizing it as “a highly successful voluntary migration program.” The Commission, the N/R Utilities note, “strongly encouraged” adoption of the Switch and Save approach by other utilities, citing it as “a model that works extremely well in jump-starting the energy market.” The N/R Utilities then argue that the Commission’s promotion of the Switch and Save program was premature and potentially detrimental to consumers because it was made without any assessment of customer impacts. Plainly then, the N/R Utilities are concerned with (and apparently adamantly opposed to) the Commission’s competitive vision, including the implementation of PowerSwitch type programs in their service territories, as articulated by the Commission in the Statement of Policy.

The appropriate procedural means to dispute the Commission’s endorsement of PowerSwitch type programs, however, is not to challenge Orange and Rockland’s Retail Access Plan. Rather, the N/R Utilities should have filed a motion for rehearing of the Commission’s Statement of Policy. The N/R Utilities failed to do so and the time to mount such a challenge has long since passed.¹¹ Having failed to challenge the Statement of Policy within the prescribed statutory time frame, the N/R Utilities are prohibited from raising such a challenge within the confines of any proceeding to consider the Company’s Retail Access Plan.

¹⁰ Case 04-E-0572, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Adopting Three-Year Rate Plan, at p. 49 (issued March 24, 2005). This methodology, of course, stands in direct contrast to the traditional rate base, rate of return pricing methodology that plainly requires extensive public monitoring by the Commission.

¹¹ As the N/R Utilities are well aware, Public Service Law Section 22 requires that any motion for rehearing must be filed within 30 days after the service of the Statement of Policy.

Conclusion

For all the reasons set forth above, the Commission should reject the comments submitted by the N/R Utilities.

Please contact me if you have any questions regarding this matter or if you wish to discuss this matter further.

Very truly yours,

John L. Carley
Assistant General Counsel



Orange & Rockland

April xx, 2005

Customer Name
555 Test Avenue
Test Town, NY 12345

Service Address:
555 Test Avenue
Test Town, NY 12345

Account# 12345-67890

Dear Customer Name:

This letter confirms your recent decision to purchase your electricity from an alternate supplier. The supplier that has been assigned to serve your energy needs is:

MARKETER NAME
MARKETER ADDRESS
MARKETER PHONE NUMBER

Your electricity will be supplied by the above marketer at a discount of 7% off the Orange and Rockland supply rate for a two-month period. Your new supplier should be in contact with you in the next several weeks to provide information about its company and to discuss your prices beyond the two-month introductory period. If they do not contact you we suggest that you contact them to discuss what their supply prices will be beyond this two-month introductory period. Terms and conditions vary by supplier.

Even though you'll be purchasing your energy supply from the above provider, ORU will continue to deliver the energy to your home or business. Also, we will continue to bill you monthly, and the bill will include both the supply charges from your alternate supplier and ORU's delivery charges. Once you begin purchasing from an alternate supplier, you retain the right to call us at any time to cancel that service and revert to ORU as your energy supplier.

You do not need to take any action if this information is correct. If you would like to cancel this supplier change, please call customer service at 1-877-434-4100. The center is open from 8 a.m. until 9 p.m., Monday through Friday.

Unless we hear from you, your new supplier will begin providing your electricity on your first scheduled meter reading date on or after April XX, 2005.

Thank You.
Orange and Rockland Utilities, Inc.